

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Granlund Analyst: Colin Stevens Bill Number: AB 1379
Related Bills: See Legislative History Telephone: 845-3036 Amended Date: 4/15/99
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Funeral Trusts

SUMMARY OF BILL

Under the Business and Professions Code, this bill would allow a trustee of a funeral trust to pay taxes on earnings of the trust, provided the taxes are not paid from the corpus of the trust.

SUMMARY OF AMENDMENT

The April 15, 1999, amendments removed the bill's prior provisions and inserted the provisions discussed in this analysis.

EFFECTIVE DATE

This bill would take effect January 1, 2000.

LEGISLATIVE HISTORY

SB 519 (Stats. 1998, Ch. 7) conformed to various federal funeral trust provisions.

SPECIFIC FINDINGS

A pre-need funeral trust is an arrangement whereby an individual purchases funeral services or merchandise from a funeral home for the benefit of a specified person in advance of that person's death. (The beneficiary may be either the purchaser or another person.) The purchaser enters into a contract with the provider of such services or merchandise whereby the purchaser selects the services or merchandise to be provided upon the death of the beneficiary and agrees to pay for them in advance of the beneficiary's death. Such amounts (or a portion thereof) are held in trust during the beneficiary's lifetime and are paid to the provider of services upon the beneficiary's death.

Under federal law prior to the passage of the Taxpayer Relief Act of 1997 (TRA of 1997) and California tax law prior to SB 519 (Stats. 1998, Ch. 7), pre-need funeral trusts generally were treated as grantor trusts, and the annual income earned by such trusts was included in the gross income of the purchaser/grantor. Any amount received from the trust by the seller (as payment for services or merchandise) was included in the gross income of the seller. To the extent that pre-need funeral trusts were treated as grantor trusts, numerous individual taxpayers were required to account for the earnings of the trusts on their tax returns, even though the earnings with respect to any one taxpayer may have been small.

Board Position:

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Department Director

Date

Under federal and state tax laws, the trustee of a pre-need funeral trust may elect special tax treatment for the trust, to the extent the trust would otherwise be treated as a grantor trust.

Under federal and state laws, the trustee's election to have this provision apply to a qualified funeral trust is to be made separately with respect to each purchaser's trust. The IRS has issued guidance with respect to the simplified reporting requirements so that if the election is made, a single annual trust return may be filed by the trustee, separately listing the amount of income earned with respect to each purchaser. If the election is made, the trust is not treated as a grantor trust and the amount of tax paid with respect to each purchaser's trust is determined in accordance with the income tax rate schedule generally applicable to estates and trusts, but no deduction for a personal exemption is allowed. The tax on the annual earnings of the trust is payable by the trustee. The provision is effective for taxable years ending after August 5, 1997.

Federal law provides that a pre-need funeral trust may continue to qualify for the special tax treatment for 60 days after the decedent's death, even though the trust ceases to be a grantor trust during that time. In addition, federal law extends the IRS authority to include trusts terminated during the year (for example due to the death of the beneficiary) in the simplified reporting process. State law has not conformed to this federal provision.

Under the Business and Professions Code (B&P), funeral trustees may hold in trust money or securities under a pre-need funeral contract. Although the Revenue and Taxation Code (R&TC) requires a trustee to pay taxes on earnings of the trust, as described above, the B&P does not currently allow trustees to use trust income (earnings) to pay taxes.

Under the B&P, **this bill** would allow a trustee of a funeral trust to pay trust taxes out of the income (but not corpus) of the trust.

Implementation Considerations

Implementing this bill would not significantly impact the department's programs and operations.

Technical Consideration

This bill specifies that the trustee may pay taxes pursuant to R&TC Section 17760.5. If the author intends to allow trustees also to pay federal taxes from earnings of the trust, he may wish to remove the specification that taxes paid be pursuant to Section 17760.5.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

This bill would not impact the collection of state tax revenues.

BOARD POSITION

Pending.